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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

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SUBJECT: Ethics Guidance on Gifts Between Employees in Times of Crisis

The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to answer frequently raised questions concerning gifts between Federal executive branch employees in times of crisis. When a Federal employee faces a personal tragedy such as a house fire, a serious illness, or the death of a family member, their Federal colleagues may wish to assist them in their time of need. This Legal Advisory discusses: (1) the regulatory framework for gift-giving between employees found in subpart C of the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards), (2) the application of subpart C’s special, infrequent occasion exception<sup>1</sup> to gifts between employees during times of crisis; (3) guidance for employees seeking to solicit donations for themselves and others (including using crowdsourcing websites in the Federal workplace<sup>2</sup>); and (4) considerations for specific types of donations, including in-kind gifts, gifts of cash, and leave donations. Employees should work closely with their ethics officials if they are considering donating to their colleagues in times of crisis, as the application of the gift rules is fact-specific and often complex.

**I. Restrictions on Gift-Giving Between Employees**

When considering a gift to a Federal employee, employees should first consider their relationship to the recipient.<sup>3</sup> Many gifts between Federal employees in times of crisis do not come under the scope of subpart C, which restricts only those gifts given to superiors or accepted

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<sup>1</sup> 5 C.F.R. § 2635.304(b).

<sup>2</sup> OGE provided guidance in 2020 about employee participation in crowdfunding activities. *See* OGE Legal Advisory LA-20-07 (Oct. 6, 2020). This Advisory builds on aspects of this prior guidance in the specific context of gifts between employees.

<sup>3</sup> While this Advisory focuses primarily on subpart C considerations, if a supervisor gives a gift to a subordinate for performing their official duties, this could possibly raise concerns under 18 U.S.C. § 209. However, the Office of Legal Counsel has found that gifts primarily motivated by sympathy, rather than an intent to compensate the employee for their Government service, do not violate 18 U.S.C. § 209. *See Applicability of 18 U.S.C. § 209 to Acceptance by FBI Emps. of Benefits Under the “Make a Dream Come True” Program*, 21 Op. O.L.C. 204 (1997) (finding that FBI employees with terminally ill children may accept benefits under a program administered by a 501(c)(3) organization, even though the class of eligible recipients is defined in part by a nexus to the FBI).



from an employee who receives less pay.<sup>4</sup> The prohibition on gifts to superiors is intended to prevent the potential misuse of public office and impartiality issues that can arise when superiors accept gifts from their subordinates or when subordinates offer gifts to or solicit gifts for their superiors.<sup>5</sup> Further, an employee generally may not accept a gift from an employee receiving less pay unless: (1) there is a personal relationship between the two employees that would justify the gift and the employee receiving the gift is not the official superior of the employee giving the gift; or (2) the employee giving the gift is the official superior of the employee receiving the gift.<sup>6</sup> This Advisory focuses specifically on how to analyze these more restricted gifts, including gifts between groups of employees with differing superior/subordinate or pay relationships.

## II. Special, Infrequent Occasion Exception

There are certain narrow circumstances where these restricted gifts between employees are permissible—specifically, in recognition of infrequently occurring occasions of personal significance.<sup>7</sup> Pursuant to that exception, “[a] gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay: (1) in recognition of infrequently occurring occasions of personal significance such as marriage, illness, bereavement, or the birth or adoption of a child; or (2) upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.”<sup>8</sup> OGE has received many questions about the application of the special, infrequent occasion gift exception during times of crisis and provides guidance on the application of this exception below.

### A. *How should ethics officials and employees determine whether a specific event is a “special, infrequent occasion”?*

Consistent with OGE’s longstanding advice on special, infrequent occasions, employees must evaluate the specific details of the occasion to determine if the special, infrequent occasion exception is appropriate. Employees and ethics officials must evaluate both (1) if the event is significant to the employee receiving the gift and (2) if the event occurs rarely to determine whether it qualifies as a special, infrequent occasion. Both considerations are discussed below in greater detail and in the context of employees in crisis.

**1. Significance.** A special, infrequent occasion must be significant—in other words, an important life event.<sup>9</sup> For example, if a Department of State employee’s newborn child needs surgery, that event is important and of consequence, while if that same employee’s child sprains their ankle while learning to ride a bicycle, that event does not rise to the same level of

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<sup>4</sup> 5 C.F.R. § 2635.302(a)(1).

<sup>5</sup> See Standards of Ethical Conduct for Employees of the Executive Branch (Proposed Rule), 56 Fed. Reg. 33,778, 33,783 (proposed July 23, 1991). In subpart C of the Standards, OGE expressly permitted gifts based on a personal relationship where the employee receiving the gift is not the official superior of the employee giving the gift, thus emphasizing the heightened concern specific to subordinates giving gifts to superiors. See 5 C.F.R. § 2635.302(b)(1).

<sup>6</sup> 5 C.F.R. § 2635.302(b).

<sup>7</sup> *Id.* § 2635.304(b)(1).

<sup>8</sup> *Id.* § 2635.304(b).

<sup>9</sup> Significant is defined as “having meaning,” as well as “having or likely to have influence or effect: important.” *Significant*, MERRIAM-WEBSTER (11th ed. 2022).

significance. Accordingly, though both events are rare, the sprained ankle event is not significant enough to qualify as a special, infrequent occasion.<sup>10</sup>

**2. Rarity.** A special, infrequent occasion also must be a rare (as opposed to regular or inherently recurring) occurrence.<sup>11</sup> For example, if a military servicemember's house burns down, that is a highly unusual occurrence that is unlikely to happen more than once to a single individual. However, if that same military servicemember incurs significant expenses while moving into a new house as part of a routine Permanent Change of Station (PCS) move, such moves are inherently recurring for most active-duty military servicemembers<sup>12</sup> and would not be considered rare. Accordingly, though both events are personally significant, the PCS move is not rare enough to qualify as a special, infrequent occasion.<sup>13</sup>

*B. Can employees give a gift to a superior or accept a gift from an employee who receives less pay using the special, infrequent occasion exception if the receiving employee is facing a crisis?*

In many cases, yes. Using the framework discussed above, crises are often by definition both significant and rare, and would generally qualify for the special, infrequent occasion exception. For example, if an employee has just suffered a house fire, their Federal colleagues could provide donations to assist with getting new clothes and furniture.<sup>14</sup> As discussed above, a house fire is both significant to the employee and rarely occurring, and thus qualifies as a special, infrequent occasion. Similarly, if an employee's spouse were to pass away, that would again fit the special, infrequent occasion framework. When determining what amount is "appropriate to the occasion," ethics officials can advise that there is no set amount, though the examples in 5 C.F.R. § 2635.304(b), which discuss contributions of \$19 to \$70, are instructive.<sup>15</sup>

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<sup>10</sup> Use of this exception for significant life events directly related to the employee's official position (e.g., to raise money due to an impending layoff or to raise money for legal expenses related to the employee's official position) would raise appearance concerns and is discouraged. Employees may use the process outlined in subpart J of the Standards to establish a legal expense fund and must ensure all donations through subpart J conform with subpart C. *See* 5 C.F.R. § 2635.1002(c)(1).

<sup>11</sup> Rare is defined as "seldom occurring or found; uncommon." *Rare*, MERRIAM-WEBSTER (11th ed. 2022).

<sup>12</sup> Birthdays, including milestone birthdays (e.g., "those ending in zero" and first birthdays), are not "rare," as a birthday is an inherently recurring event. *See* 5 C.F.R. § 2635.304(b), ex. 4. Similarly, promotions within the supervisory chain of an organization are not events of personal significance within the meaning of § .304(b). *See id.* § 2635.304(c), exs. 3-4.

<sup>13</sup> Use of this exception for significant life events directly related to the employee's official position (e.g., to raise money due to an impending layoff or to raise money for legal expenses related to the employee's official position) would raise appearance concerns and is discouraged. Employees may use the process outlined in subpart J of the Standards to establish a legal expense fund and must ensure all donations through subpart J conform with subpart C. *See* 5 C.F.R. § 2635.1002(c)(1).

<sup>14</sup> All donations must be appropriate to the occasion. *Id.* § 2635.304(b). Employees soliciting voluntary contributions for a gift to an official superior should be mindful that if they recommend a contribution amount, the Standards require a statement that an employee may choose to contribute less or not at all. *Id.* § 2635.303(f); *see* discussion of solicitation in section III *infra*.

<sup>15</sup> The preamble to the final rule publishing the Standards in 1992 notes that:

[OGE] did not revise the section to incorporate a dollar limitation or to limit gifts to those of a sentimental nature. More flexibility is required to permit appropriate gifts on the special occasions

However, not all stressful or negative life events qualify as special, infrequent occasions. For example, if a supervisor misses a week of work due to the flu but makes a full recovery, that occasion is neither significant nor necessarily rare, as flu-like illnesses are very common.<sup>16</sup> Accordingly, the supervisor's subordinate could not use the special, infrequent occasion exception to help purchase a meal delivery service gift card for their supervisor. Similarly, subordinates could not take up a collection to purchase a sun lamp for their supervisor who suffers from severe seasonal affective disorder every winter.<sup>17</sup> Though such a condition is likely significant to the employee, it is not rare, as the symptoms manifest each year. As these evaluations are necessarily fact-specific, ethics officials should work with employees to determine whether a specific situation fits within the framework for special, infrequent occasions.

### III. Solicitations in Times of Crisis

Employees may wish to solicit other Federal employees on behalf of themselves, their loved ones, or another employee who is facing a crisis. Under the Standards, employees may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior on special, infrequent occasions.<sup>18</sup> However, soliciting for individuals in the Federal workplace is rife with potential ethics pitfalls, both because of the diverse nature of the Federal workplace (which includes employees with varying pay and relationships) and because of the structure of crowdsourcing websites, which are a common tool for donations<sup>19</sup> for people in need. This section provides answers to certain questions about solicitations in the Federal workplace.

#### A. *Can an employee personally solicit donations in the Federal workplace if they or their loved ones are facing a crisis?*

Generally, no. While some such solicitations may not be subject to the subpart C restrictions, and the special, infrequent occasion exception might apply in other cases, personal solicitations in the Federal workplace raise complex ethics issues. Different rules apply to different individuals (such as those receiving less pay or contractors),<sup>20</sup> and misuse or impartiality concerns can arise depending on the specific nature of the donor, recipient, and

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covered. For example, where an employee is invited by [their] official superior to a formal wedding and reception, a gift in excess of \$25 may be customary and, thus, appropriate to the occasion. On the other hand, a gift worth considerably less may be appropriate for an office bridal shower.

Standards of Ethical Conduct for Employees of the Executive Branch (Final Rule), 57 Fed. Reg. 35,006, 35,023 (Aug. 7, 1992). In addition, some agencies may have supplemental regulations that place limits on the value of a voluntary contribution that may be solicited under the 5 C.F.R. § 2635.304(c)(1) exception. *See, e.g.*, the Department of Defense's supplemental ethics regulation at 5 C.F.R. § 3601.104.

<sup>16</sup> If, however, an employee is hospitalized due to an illness, that fact could change the analysis of the event's significance and rarity.

<sup>17</sup> For a complete discussion of the rules governing solicitation/collections for employees during a time of crisis, *see* discussion in Section III *infra*.

<sup>18</sup> 5 C.F.R. § 2635.304(c).

<sup>19</sup> Solicitations for individuals are distinguishable from fundraising for a nonprofit under 5 C.F.R. § 2635.808.

<sup>20</sup> While employees may work with government contractors in the Federal workplace, any gifts from contractors need to be analyzed under subpart B of the Standards rather than subpart C.

gift.<sup>21</sup> Accordingly, all employees should exercise caution and consult closely with their ethics officials if they are considering an in-office solicitation for themselves or their loved ones.

Moreover, supervisors should never solicit their subordinates if they or their loved ones are facing a crisis—even if the crisis fits the definition of a special, infrequent occasion. The Standards provide that an official superior shall not coerce the offering of a gift from a subordinate.<sup>22</sup> Such requests, which are emotional in nature, may frequently appear coercive, regardless of the superior’s intentions.

*B. Can an employee solicit donations in the Federal workplace on behalf of another employee or that other employee’s loved one?*

It depends. While some solicitations (such as for an employee making less pay) are not restricted by the Standards, subpart C generally prohibits an employee from soliciting donations for their supervisor in the Federal workplace.<sup>23</sup> Employees may solicit for voluntary contributions for their superiors for events that qualify as special, infrequent occasions, as long as they work closely with their ethics officials to address the ethics issues that are specific to the Federal workplace, as discussed above.<sup>24</sup>

Notably, however, if the affected individual is not the receiving employee (such as when a group of employees would like to collect donations for a supervisor’s sick relative), the employee and ethics official must look to the relationship between the receiving employee and the affected individual to determine first (if the gift was given to the employee’s loved one) if it is restricted by subpart C,<sup>25</sup> and second, if the occasion is of sufficient personal significance to the employee to qualify as a special, infrequent occasion.<sup>26</sup> For example, if the colleagues of a higher-paid employee whose spouse or child was just diagnosed with a serious illness wish to solicit donations to help with medical expenses, such a solicitation would be appropriate under the special, infrequent occasion exception, as it is an indirect gift that has a clearly significant impact on the employee. However, if the receiving employee’s aunt—with whom that employee

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<sup>21</sup> In certain cases, such as when an employee who makes more pay accepts a gift to their spouse or child by an employee who receives less pay, that gift should be considered an indirect gift to the employee. 5 C.F.R. § 2635.303(b); *id* § 2635.203(f). *See* discussion in section III.B. *infra*.

<sup>22</sup> 5 C.F.R. § 2635.302(c). Furthermore, while there is no *per se* prohibition on supervisors making solicitations for voluntary contributions for others, there is an inherent element of coercion (whether or not intended) when supervisors “ask for” or “encourage” subordinates to contribute.

<sup>23</sup> *Id.* § 2635.302(a)(2). In addition, § 2635.302(b) restricts employees receiving more pay from accepting gifts from employees receiving less pay, including solicited donations.

<sup>24</sup> The Standards do not restrict solicitations for employees who are not the official superior of either the donating or soliciting employee.

<sup>25</sup> Gifts from an employee making less pay to the parent, sibling, spouse, child, dependent relative, or member of the household of a higher-paid employee should be analyzed as indirect gifts to that higher-paid employee and are restricted by subpart C. 5 C.F.R. § 2635.303(b); *id* § 2635.203(f). In analyzing solicitations for a friend or relative of a superior, the employee and ethics official should look to the closeness of the relationship to determine if the gift will ultimately benefit the employee (*e.g.*, a donation for the employee’s sick spouse) and thus fall under the ambit of the subpart C restrictions.

<sup>26</sup> *See supra* discussion of “significance” in section II.A.1.

is not in regular contact—receives a similar diagnosis, this event is likely not of sufficient personal significance to the employee to qualify as a special, infrequent occasion.<sup>27</sup>

*C. Can crowdsourcing platforms be used to solicit gifts for employees in crisis?*

OGE generally discourages solicitation via crowdsourcing platforms in the Federal workplace. As discussed in OGE Legal Advisory LA-20-07, an online crowdsourcing appeal that is intended to benefit a Federal employee (or their loved ones) and is sent specifically to other Federal employees creates a variety of potential ethics issues. First, the public nature of crowdsourced fundraising platforms, which often list the names and donation amounts of donors, can create inappropriate pressure for employees to donate. Further, crowdsourcing websites do not account for the fact that ethics rules apply differently to different employees: gifts to superiors or from those making less pay than the recipient are restricted unless an exception applies, while gifts from other employees are not. Finally, if the workplace includes contractors, those contractors are prohibited sources, so the employee must be careful to screen out impermissible donations from contractors to ensure compliance with the subpart B restrictions on receiving gifts from outside sources.<sup>28</sup>

#### **IV. Types of Donations**

There are many different types of donations employees may want to make to assist their colleagues facing a crisis, including leave donations and cash gifts. In-kind donations, which are non-monetary gifts of tangible items, may also be sought or given during times of crisis. Accordingly, this section provides guidance about each of these types of donations.

*A. Can an employee make in-kind donations, such as clothing, to a Federal colleague in crisis if the gift is otherwise permissible (e.g., for a special, infrequent occasion)?*

Generally, yes. As the definition of “gift” in the Standards includes in-kind items,<sup>29</sup> any applicable exception or exclusion applies equally to in-kind donations. In fact, ethics officials may determine that gifts of items that will directly help the employee in need, such as replacement clothes or furniture in the event of a house fire, are preferable to gifts of cash. In addition, as discussed elsewhere in this Advisory, some gifts between employees are not restricted by subpart C.

However, the value of any in-kind donation donated to a supervisor still must be “appropriate to the occasion.”<sup>30</sup> Accordingly, a donation of an item such as a motor vehicle to a supervisor who was in a car accident would likely raise appearance concerns due to the high monetary value of such an item.<sup>31</sup>

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<sup>27</sup> Moreover, if the gift is given, for example, to the employee’s aunt, it likely does not fall within the ambit of subpart C as it would not be considered an indirect gift. *See* 5 C.F.R. § 2635.303(b); *id* § 2635.203(f).

<sup>28</sup> For a more detailed discussion of ethics issues involving contractors, *see* OGE DAEOgram DO-06-023 (Aug. 9, 2006).

<sup>29</sup> 5 C.F.R. § 2635.203(b).

<sup>30</sup> *Id.* § 2635.304(b).

<sup>31</sup> *See supra* discussion of the range (from \$19-\$70) in section II.B.

*B. Can an employee donate a gift of cash to a supervisor if the gift is otherwise permissible (e.g., for a special, infrequent occasion)?*

Yes. Cash can be permissible as a gift, including under the special, infrequent occasion exception, if it is determined that such a gift is “appropriate to the occasion.”<sup>32</sup>

However, if a group collection is being organized in the office, the collecting employee must clearly indicate that any contribution is voluntary,<sup>33</sup> and a statement that the employee may choose to contribute less or none at all must accompany any recommended amount. Further, in order to guard against potential coercion, it is recommended that no one other than the collecting employee know who made contributions or the amounts of any contribution. Employees should only donate “nominal” amounts<sup>34</sup> to these group in-office collections—even when a gift exception like a special, infrequent occasion applies.

*C. May employees donate leave to a Federal colleague in a time of crisis, such as an illness?*

Generally, yes. Employees may transfer leave to any employee who is not their direct supervisor.<sup>35</sup> However, while an employee in need of additional leave would not necessarily create misuse of position concerns through an in-office solicitation of leave donations, the employee should take care to ensure that the content of their solicitation is not coercive.<sup>36</sup> For example, if a senior employee needs additional time off work to care for a premature baby in the hospital, it generally would be appropriate for the senior colleague to approve an office-wide announcement that they are in need of leave donations, and a junior employee may properly donate leave to that senior colleague. However, the senior colleague should not imply that if the junior colleague donates leave, they will mention their generosity to the junior colleague’s supervisors, as such action would be coercive and likely amount to misuse of that employee’s more senior position.<sup>37</sup>

*D. What are the financial disclosure requirements for gifts received in times of crisis, including leave donations?*

Employees must report gifts over the reporting threshold<sup>38</sup> on their financial disclosure reports, including gifts that otherwise qualify for an exception in subpart C, such as gifts given due to a special, infrequent occasion.<sup>39</sup> Donated leave is a reportable gift.<sup>40</sup> Recipients who are

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<sup>32</sup> See 5 C.F.R. § 2635.304(c), exs. 1, 3-5, which address cash donations from individual employees to purchase a group gift. Giving donations of cash directly to an employee in crisis, while permissible, is not necessarily encouraged.

<sup>33</sup> *Id.* §§ 2635.303(f), .304(c)(1).

<sup>34</sup> *Id.* § 2635.304(c)(1).

<sup>35</sup> *Id.* §§ 2635.304(a)(5), 630.906(d). Ethics officials should confirm that their human resources office does not have additional restrictions.

<sup>36</sup> See *id.* § 2635.302(c).

<sup>37</sup> See *id.* § 2635.702(a) (prohibiting employees from using or permitting the use of their Government positions or any authority associated with their public office in a manner that is intended to coerce or induce a benefit).

<sup>38</sup> *Id.* § 2634.304(a) (currently \$480).

<sup>39</sup> *Id.* § 2634.304(a), (c) (listing the exclusions from gift reporting on public financial disclosure reports, which are distinct from the 5 C.F.R. part 2635, subpart B gift exclusions).

<sup>40</sup> *Id.* §§ 2634.105(h), .304(a), § 2635.203(b).

financial disclosure filers should report the donated leave as a lump sum on their OGE 278 or OGE 450 forms if they are not aware of the identities of the donors. Recipients who are aware of the donor's identity should report the donor on their financial disclosure form.

## V. Other Frequently Asked Questions

### A. *Do the subpart C rules apply when the two Federal employees are at different agencies?*

Yes. The definition of "employee" in subpart C includes all employees in the executive branch and is not limited to employees of the same agency.<sup>41</sup> Moreover, an employee could theoretically have an official superior in a different agency (*e.g.*, when the employee is on a detail). Accordingly, any executive branch employee must consider the subpart C rules when considering a donation to any other executive branch employee. For example, if a Department of State employee wants to donate to a fundraiser for a more senior Department of the Treasury employee whose basement recently flooded, the more senior employee will still need to determine if they can accept the donation under the subpart C rules.

### B. *Can an employee accept a gift from an employee receiving less pay if the two employees have a personal relationship?*

Yes, as long as the receiving employee is not the official superior of the gift-giving employee. Employees are not prohibited from accepting a gift from an employee receiving less pay if there is a personal relationship between the two employees that would justify the gift and the receiving employee is not the official superior of the employee giving the gift.<sup>42</sup> Employees should use factors such as the history and nature of the relationship to determine whether the gift is motivated by a family relationship or personal friendship rather than the position of the employee.<sup>43</sup> This exception generally would not apply if the relationship is limited to workplace interactions, even if the relationship is long-lasting.<sup>44</sup>

For example, a NASA employee may accept a \$200 floral arrangement to mark the anniversary of their mother's death from their college roommate, who works at the Department of Labor and receives less pay than the NASA employee. That gift may be accepted even though the anniversary is not a special, infrequent occasion because the circumstances make clear that this gift is motivated by their personal relationship, not the position of the employee, and the NASA employee is not the official superior of the Department of Labor employee who is giving the gift. However, if that same NASA employee has a friendly relationship with a NASA

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<sup>41</sup> *Id.* § 2635.102(h).

<sup>42</sup> *Id.* § 2635.302(b)(1). Although the restriction on accepting gifts based on a personal relationship where the receiving employee is not the official superior of the employee giving the gift does not apply to gifts given on special, infrequent occasions, supervisors should nevertheless consider declining such gifts when "a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting the gift." *Cf. id.* § 2635.201(b)(1)(discussing factors to be considered when accepting a gift from outside sources under subpart B).

<sup>43</sup> *See id.* § 2635.204(b) (defining the circumstances where a personal relationship would justify the acceptance of a gift).

<sup>44</sup> *See, e.g.*, OGE Inf. Adv. Op. 06x3 (Mar. 21, 2006).

colleague who receives less pay, but the two never socialize outside of work, acceptance of a similar floral arrangement would likely be inappropriate.

## **VI. Conclusion**

Federal employees often wish to support each other when facing difficult life circumstances, such as illnesses or natural disasters. Because certain gifts between employees are restricted by the Standards and may raise complex ethics concerns—especially if the gift is given to a superior—employees should work closely with their ethics officials if they are considering giving gifts to their colleagues in times of crisis. Agency ethics officials may contact their OGE Desk Officer if they have any questions about this advisory or the application of the ethics rules to gifts between employees in times of crisis.